IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.698 OF 1999

Jagdamba Shahkari Pani Puravatha
Sanstha and Another ...Applicants

Versus

Shri Shankar Baban Javalkar ...Respondent

Shri A.P.Vanarase for the Applicants.

Shri S.G.Deshmukh for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 26, 2007.

ORAL JUDGMENT:

1. Heard the learned Advocates appearing for the parties. The Petitioners are the original Defendants who have taken exception to Judgment and Order dated 02nd December, 1998 by which a preliminary issue of jurisdiction has been answered in favour of the Respondent-Plaintiff.

2. The Respondent-Plaintiff filed the suit against against the Petitioners for perpetual injunction enjoining the Petitioners to continue the water supply to the Respondent. In the plaint the Respondent alleged that he was a Member of the first Petitioner Society. He has alleged that the first Petitioner Society supplied water during the years 1989-90 and 1990-91 to his sugar-cane crop. It is alleged that at the instance

of the second Petitioner, the first Petitioner abruptly stopped water supply to the Respondent. A notice was issued by the Respondent to the Petitioners calling upon them to supply water. An Application was made on 27th November, 1996 by the Petitioners at Exhibit 15 purporting to be an Application under section 9A of the Code of Civil Procedure, 1908 praying that preliminary issue of jurisdiction of the Civil Court in view of bar created by section 91 of the Maharashtra Co-operative Societies Act, 1960 may be framed. Accordingly, by order dated 16th October, 1967 the Application at Exhibit 15 was allowed and the learned trial Judge framed a preliminary issue of jurisdiction. It must be noted here that Application for framing preliminary issue was made after the Petitioners filed the written statement. In the written statement the contention regarding bar of jurisdiction was raised and it was also contended that the assertion of the Respondent that he was the Member of the Petitioner-Society was not correct. By the impugned order, the learned trial Judge held that the Civil Court had jurisdiction to decide the suit.

3. The learned Advocate for the Petitioners submitted that the learned trial Judge could not have considered the averments made in the written statement

of the Petitioner for deciding the issue of jurisdiction. He urged that the issue of jurisdiction is required to be decided on the basis of the averments made in the plaint. He submitted that going by the averments made in the plaint, on the face of it, the dispute in the suit was a dispute between the Respondent-member and the first Petitioner-Society touching the business of the first Petitioner-Society and therefore, the jurisdiction of the Civil Court was ousted. He relied upon Registration Certificate of the first Petitioner as well as the objects of the first Petitioner which are annexed to this revision Application.

4. The learned Advocate for the Respondent invited my attention to observations made in the impugned order that no documentary evidence was produced by the Petitioners to substantiate their case that the matter in dispute in suit falls within four corners of section 91 of the said Act of 1960. He submitted that there was nothing on record to show that the Petitioners led evidence to show as to what was the object of the first Petitioner-Society. He submitted that there was nothing on record to show that the Petitioners or the Respondent led any evidence.

5. I have carefully considered the submissions. It is true that the learned trial Judge could not have considered the averments made in the written statement for deciding the issue of jurisdiction. In the present case, though the name of the first Petitioner-Society may suggest that one of its object was to supply water, still it was necessary for the first Petitioner to lead evidence and to produce on record as to what was the object and business of the first Petitioner-Society. There is no evidence led to show as to what was the status of the second Petitioner as in the plaint. The Respondent has prayed for relief even against the second Respondent. The learned trial Judge while passing the order below Exhibit 15 had granted liberty to the parties to lead evidence. It appears that the said liberty was not availed of.

5. Considering the controversy involved, in the facts of this case it was necessary for the parties to lead evidence for deciding the issue of jurisdiction. However, that has not been done. The suit is of the year 1996 which is now pending for framing issues. It will cause prejudice to both the parties if the case is remanded to the trial Court for enabling the parties to lead evidence only on the issue of jurisdiction. As the suit is of the year 1996, now the issues can be framed

and issue of jurisdiction can be decided alongwith other issues. Considering the peculiar facts of the case now it will not be in the interests of justice to hear the issue of jurisdiction as a preliminary issue.

6. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 02nd December, 1998 on issue of jurisdiction is quashed and set aside.

(ii) If the issues are not framed till today, alongwith the other issues, an issue of jurisdiction will be framed by the trial Court. If the issues are already framed, alongwith the said issues, the issue of jurisdiction will be tried by the learned trial Judge. To that extent the order dated 16th October, 1997 passed below Exhibit 15 is modified.

(iii) It is made clear that the trial Court will decide all the issues together including issue of jurisdiction.

(iv) All contentions of the parties on the issue of jurisdiction are expressly kept open.

(v) Revision Application is partly allowed in above terms with no orders as to costs.

JUDGE